

Resolution No.: 16-635
Introduced: June 10, 2008
Adopted: June 24, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: Application No. DPA 05-1 for Amendment to the Approved Development Plan for Clarksburg Village, Robert H. Harris, Esquire, Attorney for Applicants Skylark Investment LLC and Clarksburg Village LLC, Opinion And Resolution On Application

Tax Account Nos. 160200019247, 160200019236, 160200019258 and 160203375048

OPINION

The proposed development plan amendment application, filed on June 17, 2005, relates to a Development Plan that was originally approved in April, 2001 in connection with Local Map Amendment Application No. G-735, and was amended via Development Plan Amendment Application DPA 04-3, which the District Council approved on December 14, 2004. LMA G-735 approved the construction of a new development, Greenway Village (also known by its "marketing name" of Arora Hills), with 1,330 dwelling units and a commercial center containing 89,000 square feet of retail/commercial uses. At the same time, LMA G-784 approved an adjacent new development, Clarksburg Village, with 2,653 dwelling units and 20,000 square feet of retail space, to be combined in a single commercial center with the commercial portion of Greenway Village. The two zoning reclassifications thus approved a total of 109,000 square feet of commercial space. This was considerably less than the 210,000 square feet of combined retail space that the developers had requested, on the advice of Technical Staff at the Maryland-National Capital Park & Planning Commission. As described by the current developer, Elm Street Development, represented by David Flanagan, the rezoning applications were recommended for approval with 210,000 square feet of retail by Technical Staff, the Montgomery County Planning Board and the Hearing Examiner. Based on opposition from the Clarksburg Citizens Association (the "CCA") and Clarksburg residents, who pointed

out that the applicable master plan recommended 109,000 square feet of commercial space for that area, the District Council remanded the application to the Planning Board for a reduction of the combined commercial area to a total of 109,000 square feet. Mr. Flanagan stated that for the sake of expediency, nothing was changed except reducing the retail area to 109,000 square feet. This, Mr. Flanagan explained, left the developer of Greenway Village with "empty land" – land that could not be used as part of the commercial center, but had not been designated on the approved Development Plan for anything else.

Since the time of the original approvals, the developer of Clarksburg Village has purchased the portion of the commercial area that was originally part of Greenway Village, so the entire area proposed as the Village Center is under single ownership. Both entities, Greenway Village LLC and Clarksburg Village LLC (the "Applicants"), are co-applicants in this case. They seek approval for the construction of an age-restricted, multi-family apartment building with 100 dwelling units in a three-acre portion of the 17-acre commercial area.

The originally approved Development Plan provides basic street layouts and building locations for most areas of the 374-acre Greenway Village site. See Ex. 23(b). The 17-acre commercial area has a street layout and building locations, but they are overlaid by the following text: "Subject to revision in order to create a framework of internal streets and achieve a street-oriented retail development." Ex. 23(b). Thus, changes to the layout of this area are expected to occur during the site plan approval process. Site plan review has not yet taken place for the commercial area, although site plans have been approved for the other 357 acres. The Applicants are not seeking approval in this application for any elements of the Development Plan other than the addition of a multi-family building in a three-acre portion of the commercial area. Other changes in the design and layout of the commercial area will be considered during site plan review, consistent with the original Development Plan approval.

The Hearing Examiner recommended approval of the proposed Development Plan on grounds that the additional development would be consistent with the applicable master plan,

compatible with existing and planned uses in the surrounding area, and in compliance with the development standards for the zone. After an initial recommendation of denial from Technical Staff in late 2006, followed by a long period during which the application was deferred, the Planning Board and its Technical Staff provided similar recommendations. The District Council agrees with the Hearing Examiner's conclusions and incorporates her Report and Recommendation of April 30, 2008 herein.

The Greenway Village/Arora Hills property consists of approximately 374 acres of land. The commercial center contains approximately 17 acres, and is bounded by future sections of Little Seneca Parkway, Arora Hills Drive, Newcut Road and Snowden Farm Parkway.¹ The term "subject property" is used in this resolution to refer to the three-acre portion of the commercial center that is the subject of this application, which is located in the northwest corner of the commercial area, at the future intersection of Arora Hills Drive and Little Seneca Parkway. The subject property is part of a hilly, irregularly shaped, vacant piece of land surrounded by vast open space and large trees. A portion of the open space immediately west of the subject site is designated as the Greenway Trail, to be preserved as an amenity. The only nearby road that actually exists is Newcut Road, which abuts the commercial area to the west, but does not abut not the subject property.

The surrounding area for this application consists generally of the 17-acre commercial area and all parcels adjacent to it and confronting across planned roadways, as well as the first row of homes on the west side of the Greenway Trail. The surrounding area as thus described is classified under the PD-4 Zone and contains mostly undeveloped land. The 17-acre commercial area is intended for retail/commercial development, although no specifics have been provided as to the nature of the uses or the size of the buildings. The rest of the surrounding area is either planned for or has been developed with the Greenway Trail and various types of dwellings: single-family detached homes, townhouses, two-over-two units and multi-family buildings.

¹ It is not clear whether the 17-acre figure applies just to the Greenway Village portion of the commercial center, or to the combined Greenway Village/Clarksburg Village commercial center. The line between the two development plans that were approved in the original rezonings cuts through the combined commercial area on a diagonal line slightly north of Snowden Farm Parkway. The bulk of the commercial area is on the Greenway Village side of the line, so if the 17-acre figure does not include the part south of the line, the additional acreage is not significant for purposes of this application.

The Applicants propose to add to the Development Plan an age-restricted, multi-family building containing 100 dwelling units, with four to five stories and a maximum height of 55 feet. Detailed plans would be developed during site plan review, but the preliminary plan includes four stories facing east, including the front façade of the building, a turnaround area for vehicles and a small seating area, and five stories to the west, where the topography lends itself to an additional building story. The proposed building would have a designated, gated parking area with the full number of spaces required under the Zoning Ordinance.² Based on the current breakdown of 50 one-bedroom units and 50 two-bedroom units, this would require 138 parking spaces. The promise to provide designated parking in the full amount called for under the Zoning Ordinance was added as a textual binding element at the suggestion of the Planning Board, to ensure that residents of the apartment building would not have to compete for parking with retail customers.

The Applicants presently propose to follow federal guidelines for an age-restricted building, which require that one person age 55 or older reside in each dwelling unit, and prohibit children from residing in any unit on a permanent basis. The record includes a letter to the Planning Board Chair from the owner of a real estate development firm specializing in affordable and senior housing, who recommends that new communities reserve space for senior housing early on, near shopping, public transportation, office space, churches and other services. He recommends that senior housing be located in a separate building, not above retail uses, to give residents their own identity and a sense of security, and to keep construction costs at a level that is not prohibitively expensive.

A textual binding element on the proposed development plan amendment commits the Applicants to provide architectural design features with a compatible residential appearance on all four sides. To the east, the proposed building would face a row of "two-over-two" residential buildings across

² This commitment is significant, given that other age-restricted apartment buildings have been constructed with waivers to permit fewer than the full number of parking spaces required under the Zoning Ordinance. Waivers have been granted based on arguments that due to the age restriction, residents would have fewer cars than in apartment buildings that are open to all ages. Testimony at the public hearing in this case indicated that residents of an age-restricted apartment building in a similar retail area in Clopper's Mill, where the full number of parking spaces was waived, have chronic problems finding parking spaces. The Applicants in this case have committed not to seek a parking waiver for this building, and have depicted on the development plan a designated parking area for residents.

the entry drive into the retail area. These buildings have two dwelling units on the upper two floors and two more on the lower two floors. Testimony from the Applicants' planner indicates that due to topography, these units would sit about six feet higher than the proposed multi-family building. The approved subdivision for Greenway Village sets a maximum height for the first row of units of 55 feet. Behind this row (to the east), the approved subdivision plan calls for two rows of townhouses with a maximum height of 40 feet, then another row of two-over-two's with a maximum height of 55 feet.

To the north, across Arora Hills Drive, the proposed building would confront two-over-two's with a maximum height of 50 feet and townhouses with a maximum height of 40 feet. To the north and northwest, diagonally across the proposed intersection of Little Seneca Parkway and Arora Hills Drive, the proposed building would confront single-family homes with a maximum height of 35 feet, and townhouses with a maximum height of 40 feet. The closest single-family detached home would be separated from the proposed multi-family building by a five-foot building setback, a 45-foot open space that encompasses part of a bike trail connection leading to the greenway, the 100-foot right-of-way for Little Seneca Parkway, and whatever building setback is established for the proposed building at site plan.

To the west, the proposed building would face Little Seneca Parkway and beyond it the Greenway Trail. To the south, the proposed building would be separated from the retail center by its designated parking area.

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicants except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board,

and changes to illustrative elements may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the development plan amendment proposed in this case is a two-page document. Page one, Exhibit 61(a), is entitled “Revised Development Plan”; page two, Exhibit 61(b), is entitled “Revised Development Plan – Age-Restricted Housing Area.” Exhibit 61(a) starts with the development plan that was approved in conjunction with the 2004 amendment to the original development plan, which has been revised to depict the 17-acre commercial area in a hatched pattern, with the caption “SEE SHEET 2 OF 2 FOR THIS AREA.” The Hearing Examiner’s certification block on Exhibit 61(a) states that the hatched area is subject to revisions approved by the District Council in the development plan amendment 05-1, the present case. Exhibit 61(b) shows the 17-acre commercial area at a larger scale, with approximate locations for the proposed multi-family building, its parking area and the residences planned nearby, and conceptual depictions of the proposed retail buildings and associated parking. Exhibit 61(b) also has some general notes and a series of textual binding elements, which are designed to express commitments the Applicants have made in textual form. The textual binding elements have the following effects:

1. Limit the proposed building to 100 units.
2. Provide for the number of parking spaces required under the Zoning Ordinance.
3. Specify that the building would be built in a single phase.
4. Specify a maximum building height of 55 feet with four to five stories.
5. Specify that the building will have architectural design features with a compatible residential appearance on all sides.
6. Commit to 12.5 percent Moderately Price Dwelling Units on site, in the building.

The Planning Board’s recommendation letter stated that it would carefully review the design of the project at site plan “to ensure that the senior housing is well integrated into the commercial

component of the project and that the residential building is oriented towards streets with good pedestrian circulation in the neighborhood." Ex. 39 at 2. To give the Planning Board the discretion necessary to accomplish these goals, the notes on the Revised Development Plan, Page Two, indicate that the building footprint and design, as well as pedestrian and open space features and parking configuration, are approximate and subject to site plan approval.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with use and density indicated in the master plan. The Hearing Examiner, the Planning Board and Technical Staff found that the proposed development would be in substantial compliance with the use and density indicated in the *1994 Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area* (the "Master Plan"). The District Council agrees. Greenway Village and Clarksburg Village are located in the Newcut Road Neighborhood defined in the Master Plan, which lies south of the Clarksburg Town Center and the Clarksburg Historic District. The Newcut Road Neighborhood contains approximately 1,060 acres, most of which have now been approved for development, including 1,330 dwelling units in Greenway Village and 2,653 dwelling units in Clarksburg Village. The Master Plan recommended development in the Newcut Road Neighborhood at a density of up to seven units per acre, which would allow slightly more than 2,600 units on the Greenway Village property. The current PD-4 zoning allows no more than four dwelling units per acre, for a total of approximately 1,500 units. The additional 100 units proposed in this application would bring the total for Greenway Village to 1,430, well below both the density permitted in the zone and the density recommended in the Master Plan. The density per acre in Greenway Village would increase from 3.5 to 3.7, well below the maximum of seven units per acre recommended in the Master Plan. The density per acre would also remain below the minimum density of five units per acre recommended in the Master Plan, but the decision to permit a lower density was made in the original rezoning.

One of the Master Plan objectives for the Newcut Road Neighborhood was to create a mixed-use neighborhood with a transit-oriented land use pattern and interconnected streets, strong pedestrian and bicycle linkages to a nearby park and a development pattern that encourages access to the greenway network. The Master Plan proposed the following mix of uses for this neighborhood (Master Plan at 62):

Residential	4,660 dwelling units
Retail	109,000 square feet
Office	Some office uses envisioned as part of the retail center
Civic/Public Uses	Local park, schools, greenway, places of worship, day care, community center.

Higher density residential uses, retail services, offices, and civic uses are clustered in the neighborhood center. To promote visual identity for the center, a vertical mix of three-to-four story buildings would be appropriate.

The Master Plan also recommended diverse housing types, avoiding large concentrations of any single type of housing within each neighborhood, and street-oriented buildings. It recommended the following breakdown among unit types for the Newcut Road Neighborhood:

Detached	45-55%
Attached	35-45%
Multi-family	10-20%

The proposed age-restricted, multi-family building would be consistent with the Master Plan's recommendation for a substantial number of residential units in the Newcut Road Neighborhood, for diverse types of housing and for senior housing near transit, local bus routes, shopping and public facilities. The proposed building would add a new type of housing (age-restricted) not currently represented in the Newcut Road Neighborhood. It would place age-restricted housing near shopping, bus routes and a public trail system – not assisted living or 65+ housing, admittedly, but nonetheless housing that is more likely than a typical apartment building to have, over time, a large percentage of residents who are older and have a greater need for shopping and buses within walking distance than the general population.

The additional 100 multi-family units would increase the percentage of multi-family units in the Newcut Road Neighborhood to almost 20 percent, the maximum recommended for the neighborhood

in the Master Plan. While it is possible that the additional 100 multi-family units could decrease the percentages of single-family detached and attached homes to levels below the minimums recommended in the Master Plan, the Planning Board can control that outcome by requiring adjustments in the number of units during the remaining site plan reviews. Moreover, the Master Plan is a guide, and the applicable statutory language requires substantial, not exact, compliance with its terms.

Community member Paul Majewski worries that the Planning Board will reduce a more desirable form of density elsewhere in the community to permit this building while keeping the unit type percentages within the Master Plan's recommendations. He argues that the future population of Greenway Village should decide where to put extra density, not the developers. Zoning in Maryland is not done by plebiscite; there is no legal mechanism to let community members decide what should be built on privately owned land. See *Quinn v. County Comm'rs of Kent County*, 20 Md. App. 413 (1974). Community input on zoning decisions is encouraged, and the District Council may properly consider and rely on relevant evidence provided by community members. Nonetheless, the District Council cannot delegate its zoning authority to the community at large. It must carry out its responsibility to decide zoning cases in a fair and reasonable manner, based on substantial, probative evidence and applicable legal standards. The preponderance of the evidence in this record indicates that the proposed multi-family building would not result in multi-family units in the Newcut Road Neighborhood exceeding the Master Plan's recommended maximum, and that if the recommended percentages of single-family units are in danger of not being met, the Planning Board can require adjustments to the unit count in this building or other types of dwellings to stay within the percentages. Alternatively, the Planning Board can make a decision to allow a minor departure from those percentages if it concludes that doing so will serve the public interest.

The proposed building would promote the Master Plan's goal of mixed uses connected by pedestrian access and street-oriented buildings by putting a building face on three streets that would otherwise be empty, along with pedestrian walkways connecting the proposed building to nearby uses. Whether the retail area as a whole will be able to achieve this Master Plan goal is a separate question,

and is not addressed here; the original rezoning decision left the layout and design of the retail area for site plan, and that decision is not altered by action on the present application.

If built to the maximum stories and height permitted by the textual binding elements, the proposed building would not fully comply with the Master Plan's recommendation for three- and four-story buildings in the retail center. The Planning Board has already permitted buildings above this height at the edge of the retail center, directly across the entry into the retail area from the subject site, and recommends permitting the proposed building at the same height. While the building proposed here is much larger than the two blocks of two-over-two's that have been approved at a 55-foot height, giving it a greater potential visual impact, the Hearing Examiner finds that the preponderance of the evidence, weighted with the opinions of the Planning Board and its Technical Staff, argues in favor of a finding that a four-to-five-story height substantially complies with the Master Plan. This finding is supported by the fact that the five-story side of the building, intended to take advantage of the natural topography, would face away from the retail center, decreasing its visual impact on the cohesive identity that presumably will be developed for the retail center during site plan review.

There is no evidence to suggest that the proposed development would be inconsistent with the General Plan or the Capital Improvement Program. It would be consistent with the County's Housing Policy, which calls for more housing generally, more affordable housing – such as the 13 MPDUs that would be part of this project – and more housing for seniors. As discussed in Part III.E. of the Hearing Examiner's Report, the proposed building would be consistent with the applicable Growth Policy.

§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

1. The Purpose Clause

The District Council found in the original rezoning decision that the goals and objectives of the PD Zone purpose clause would be satisfied by the overall Greenway Village development. As

detailed below for each paragraph of the purpose clause, the addition of the proposed multi-family building supports that finding.

1st paragraph: Master Plan implementation. For the reasons stated under (a) above and in Part III.D. of the Hearing Examiner's Report, the District Council concludes that the addition of the proposed multi-family building to the Development Plan would be in substantial compliance with the recommendations and objectives of the Master Plan. In light of the fact that the present application does not seek a change in zoning, the question of whether the proposed plan would implement the Master Plan's objectives more fully than would be possible under other zoning classifications is not relevant.

Second paragraph: social and community interaction among those who live and work in an area, distinctive visual character, balanced mix of uses. The proposed multi-family building would contribute to social and community interaction among residents of Greenway Village and to a balanced mix of uses by providing an additional housing type (age-restricted multi-family) as a transition between the retail core and the larger residential areas. It would also fill in an empty area on the Development Plan with an active residential use, including, as currently shown, an open seating area in the front of the building and sidewalks connecting it to nearby residences and the retail core. Adding building frontage on three streets, with associated sidewalks and an open seating area and turnaround, would contribute to creating a distinctive visual image for the retail core.

Third paragraph: broad range of housing types. The proposed building would add to the stock of multi-family housing in the area, and would provide the only age-restricted housing in the Newcut Road Neighborhood. The record suggests that 500 units of age-restricted housing are planned in the Cabin Branch neighborhood of Clarksburg, but a site plan application has not been filed for that development, and there is no age-restricted housing in Clarksburg today.

Fourth and fifth paragraphs: trees, grading and open space. The proposed building would not impede the implementation of the approved preliminary forest conservation plan for Greenway Village, which was found in the original rezoning to satisfy applicable requirements, nor would it interfere with the preservation of open spaces along the Greenway Trail and elsewhere in the overall project. The

proposed building would take advantage of the natural grade by having one additional story on the east side of the site, where the grade is lower. It would also make use of property that would have to be graded anyway for construction of the retail core. The small seating area shown in front of the building may also be considered an urban contribution to open space.

Sixth paragraph: pedestrian networks, minimizing reliance on cars. The proposed building would have walkways designed to connect with the system of pedestrian networks approved for Greenway Village and expected to be approved for the retail center. The building's location at the entrance to the retail center would encourage pedestrian activity by placing 100 additional dwelling units within walking distance of retail services and bus lines.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The Development Plan for Greenway Village provides for a large-scale development, to which the proposed building would contribute a new use type and a transition between the main residential areas and the retail core.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that adding the proposed multi-family building to Greenway Village would achieve a maximum of safety, convenience and amenity for residents of the building by providing a new housing option within walking distance of retail, open space and bus lines. It would also add to the convenience and amenity of Greenway Village as a whole by providing a new way for older relatives to live near Greenway Village families, by putting a building face on three streets on the edge of the retail center, and by providing a transition between the main residential neighborhoods and the retail core.

Eighth paragraph, second part: compatibility. The evidence supports the conclusion that the proposed development would be compatible with existing and planned uses in the surrounding area. The residential use type is very similar to the nearby two-over-two's and townhouses. Although the density of dwellings would be greater in this building, the lack of private outdoor space suggests less outdoor activity than may take place at other nearby types of units. The proposed building would be larger in bulk than other nearby residential buildings, but would be no greater in height than the closest

units, and similar in height to the units across Arora Hills Drive. The proposed multi-family building would be as much as 20 feet taller than the closest single-family detached home, but the distance between them would be at least 150 feet of roadway and open space, which would mitigate the visual impact considerably. The proposed building would also be a compatible addition to the Development Plan as a transition between the main residential areas and the retail core, providing a low-intensity, residential use as a buffer from the higher levels of activity in the retail core.

For the reasons discussed in Part III.E. of the Hearing Examiner's Report, the District Council concludes that the proposed building would not be incompatible on the basis of traffic impacts, as it would have no adverse impact on traffic conditions in the area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

This element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested or, in the case of a development plan amendment, whether the overall development would continue to be appropriate with the proposed amendment. The conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that the present application is proper for the comprehensive and systematic development of the County, is capable of accomplishing the purposes of the zone and is in substantial compliance with the Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-4 Zone are summarized below, together with the grounds for the District Council's conclusion that Greenway Village would not violate any of these requirements as a result of the proposed multi-family building.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The Greenway Village tract was *recommended in the Sector Plan for residential development* at a density of five to seven units per acre, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The Greenway Village tract satisfied and continues to satisfy the first of these criteria, which states the following:

That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted.

Greenway Village has enough space for the *already-approved 1,330 units*, and the subject property itself has sufficient space to permit the construction of 100 additional dwelling units.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-4 development with more than 800 units is required to have at least 25 percent multi-family units in buildings of four stories or less, and is permitted to have no more than 20 percent multi-family units in buildings over four stories. The District Council has authority under Section 59-C-7.131, note 1, to waive the percentage requirements for multi-family units to achieve master plan goals. A waiver was approved in the original rezoning to allow Greenway Village to satisfy the Master Plan recommendation with a maximum of 20 percent multi-family uses, instead of the 25 percent minimum called for in the zone. The Applicants now request a continued waiver of the 25 percent minimum for multi-family units, to keep the overall development within the unit mix recommended in the Master Plan. The Hearing Examiner recommends

that such a waiver be granted, in keeping with the original zoning approval for Greenway Village and the recommendations of the Planning Board and its Staff.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted under certain circumstances in the PD Zone, but none are proposed in this application.

Section 59-C-7.133, Other Uses. No uses other than a single multi-family residential building are proposed in this application.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The present application does not seek to change the zoning classification for the subject property or the larger Greenway Village tract, which was found appropriate in the original rezoning. With the additional 100 dwelling units proposed, Greenway Village would continue to have a residential density below the maximum permitted in the PD-4 Zone.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible with adjacent uses, as discussed in Part V.A.(b)(1) above. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility but are not relevant here, because there is no adjoining land that is not classified under the PD Zone.

Section 59-C-7.16, Green Area. The proposed multi-family building would be located on land that was *originally intended for retail/commercial* development. Its use for a multi-family building would have no impact on the conclusion in the original rezoning that Greenway Village can satisfy the PD-4 Zone's 40 percent green area requirement.

Section 59-C-7.17, Dedication of Land for Public Use. The proposed multi-family building would not change any of the dedications approved on the original Development Plan.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Revised Development Plan provides for a designated, gated parking area for the proposed multi-family building with the minimum number of spaces required under Article 59-E. Compliance with the parking requirements of Article 59-E for this building is a textual binding element specified on the Revised Development Plan, Page Two.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed in connection with the purpose clause.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The proposed multi-family building would not affect the internal vehicular and pedestrian circulation systems and points of external access that have been approved for Greenway Village to date, nor would it affect the final design of circulation and access for the retail center, which the original zoning approval left for determination during site plan review. The proposed multi-family building as shown on the Revised Development Plan sits within the street framework as currently designed. Its location is specifically described in text as approximate, to leave the necessary flexibility for its exact location to be determined, during site plan review, in relation to the final design for the retail center.

§59-D-1.61(d): preservation of natural features. The addition of the proposed multi-family building would not impede implementation of the approved preliminary forest conservation plan for Greenway Village, which has already been found acceptable. The proposed building would make productive use of land that would have to be graded anyway in conjunction with development of the retail core. It would also take advantage of the natural terrain by having one additional story on the west side of the building, where the grade is lower.

The approved preliminary water quality plan for Greenway Village assumed that the subject site would be used for commercial/retail development, and the proposed multi-family building has imperviousness characteristics compatible with commercial/retail development. Thus, the building proposed here is in conformance with the preliminary water quality plan that has already been

approved. If this application is approved, this building will be taken into account more directly in the review and approval of a final water quality plan during site plan review.

§59-D-1.61(e): common area maintenance. The Applicants report that Greenway Village has a large homeowners association established for the maintenance of common areas, and that the proposed building will either be a condominium that maintains its own common areas, or a rental project with a building owner handling the maintenance.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment.

For the reasons stated above and in the Hearing Examiner's report, the District Council agrees with the Planning Board and Technical Staff that the subject application would be in substantial compliance with the recommendations and objectives of the Clarksburg Master Plan. The positive recommendations of the Planning Board and Technical Staff also support a conclusion that the proposed development would be in the public interest. For the reasons discussed in Part III.E of the Hearing Examiner's report, the District Council concludes that the preponderance of the evidence fully supports a conclusion that public facilities would be adequate to accommodate the proposed development and would suffer no adverse impact due to implementation of the Development Plan Amendment.

Community participants raised a fairness issue that relates to the public interest. They argued that it is unfair to approve a development plan amendment now, when none of the nearby homes have been built or occupied, and that the developer should be required to wait until the new residents have arrived and can participate in deciding how the subject property should be used. The Applicants' representative testified candidly that the Applicants are seeking this development plan amendment now precisely because it is generally easier to get approval when there are no residents around to object. As

discussed in Part III.D of the Hearing Examiner's report, we do not engage in zoning by plebiscite, so there is no legal basis to require the Applicants to wait until local residents have moved in who can be polled as to their preferences. Moreover, the County routinely approves development plans in previously undeveloped areas, with no residents around to participate. The District Council does not perceive any legal basis to refuse to make a decision on a development application before local residents have moved in, simply because it is a development plan *amendment*, rather than a new development plan.

The District Council has also considered the opinion of members of Technical Staff who argued, earlier in this application process, that it would be better from a planning perspective to redesign the retail area to promote the goals and objective of the Master Plan, then add a new use on the subject site. However, the Applicants as property owners are entitled to present an application, at a time of their choosing, and receive a decision from the District Council. Moreover, approval of the present application merely approves the construction of a multi-family building on the subject site, within the parameters specified on the Revised Development Plan, Page Two. Approval of this application does not constitute approval or endorsement of any particular layout or design for the retail center as a whole. The original rezonings for Greenway Village and Clarksburg Village delegated that decision to the Planning Board at site plan review, and that delegation has not changed.

Based on the preponderance of the evidence, the District Council is persuaded that the proposed development plan amendment sufficiently supports the public interest to permit its approval.

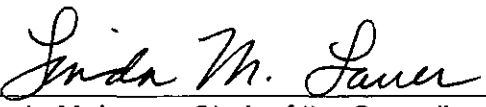
For these reasons and because to grant the instant development plan amendment application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Development Plan Amendment Application No. DPA 05-1, which seeks to amend the development plan approved in connection with Local Map Amendment No. G-735 and amended by DPA 04-3 on December 14, 2004, is hereby **approved**, subject to the specifications and requirements of the final submitted Revised Development Plan, Exhibits 61(a) and (b); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Revised Development Plan approved by the District Council, Exhibits 61(a) and (b), with the changes to the binding elements and notes that were handwritten at the March 31, 2008 hearing added in the same type as the existing text, within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council